

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARY MOSES, Personal Representative
of the ESTATE OF VICTOR VENSON,
deceased,

Plaintiff,

Case No. 1:08-cv-818

v.

Hon. Robert J. Jonker

PHILOTECHNIC, LTD.,

Defendant.

ORDER

Pending before the court is the defendant's motion to dismiss with prejudice for failure to comply with a court order and for other sanctions (docket no. 31). Prior to the time a response from plaintiff was due to this motion, plaintiff passed away. The matter was effectively stayed for a short period of time to give plaintiff's estate an opportunity to file an appearance, and on July 17, 2009, an order was entered substituting Mary Moses, Personal Representative of the Estate of Victor Venson, as party plaintiff. An Amended Case Management Order was entered on August 3, 2009, giving plaintiff until the end of August 2009 to respond to the present motion. Plaintiff submitted supplemental answers to the defendant's first interrogatories on or about August 27, 2009. While the supplemental discovery material sought in connection with the motion was furnished to defendant, no response to the motion itself was filed. Under these circumstances, if a response to the motion had been filed, the hearing on the motion held October 28, 2009 might not have been necessary.

The requested discovery having been provided after this motion was filed, the court finds for the reasons stated more fully on the record at the hearing that the motion is deemed **GRANTED** and defendant is entitled to its reasonable expenses incurred in making the motion and appearing for the hearing, including attorney's fees. Rule 37(a)(5)(A), F.R.C.P. Accordingly, defendant's counsel shall provide an affidavit and any supporting documents setting forth the amount of fees and expenses sought, within fourteen (14) days of the date of this order. Plaintiff's counsel shall have a similar period to respond in kind, and the court will resolve the matter on the papers filed. However, the court reserves the right to hold a further hearing on the issue of costs in the unlikely circumstance that it is necessary.

IT IS SO ORDERED.

Dated: November 5, 2009

/s/ Hugh W. Brenneman, Jr.
HUGH W. BRENNEMAN, JR.
United States Magistrate Judge